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JUDITH A. SZEPESE,  
BLAKELY SOKILOFF TAYLOR & ZAFMAN LLP.  
12400 WILSHIRE BOULEVARD  
SEVENTH FLOOR  
LOS ANGELES, CA 90025

EXAMINER

ZURITA, JAMES H

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/814,159  
Filing Date: March 20, 2001  
Appellant(s): RODRIGUEZ ET AL.

**MAILED**

DEC 29 2005

**GROUP 3600**

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ERIC S. REPLOGLE  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 17 October 2005 appealing from the Office action mailed 22 February 2005.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

US 5,892,900	Ginter et al.	6 April 1999
US 6,657,702	Chui et al.	2 December 2003

## (9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

**Claims 1-4, 6-25, 27-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ginter et al., (US 5,892,900).**

Ginter discloses methods and systems to track transactions involving media assets over a data network that is serviced by one or more Rights Distributor 106, Fig. 2 (applicant's service providers).

**As per claims 1 and 22**, Ginter discloses executable code for (a) **tracking information** characterizing a particular media asset of interest that is sent to the data network. See, for example, at least Col. 56, lines 1-55. For tracking data concerning an media assets, please see at least references to audits and audit trails, at least Col. 155, line 3-36. See also at least references to logs, event log **442**, for example, Col. 161, lines 36-51. See also at least references to chain of handling and control, Col. 6, lines 14-26.

Ginter discloses device(s), i.e., gateways, that receive plurality of media assets uploaded from a plurality of devices. See, for example at least Fig. 1, which discloses multiple networks connected to Ginter's information utility network. These networks are often connected by gateway device(s) so that information can be passed from one to the other (uploaded and downloaded). Such information includes a plurality of media assets. Several examples include a video production studio (204) connected to 200. See also office 210, which shows a plurality of devices (one per window) connected to a network that connects to 200. Each entity in Fig. 1 may connect to 200 via gateway

(b) **receiving and processing a request** to engage one or more of said service providers to perform one or more services for the particular media asset. See, for example, Col. 77, lines 15-41. See also at least references to end-users customers, Fig. 18 and related text, at least Col. 137, lines 21-50. For other examples of customers using particular media assets, please see at least Col. 278, line 40-Col. 279, line 32. See also at least references to users **11**, in Figs. 2 and 77 and related text.

(c) **tracking transaction information** allowing billing of requested services. See at least Col. 24, lines 24-48, for references to meters to record usage that is later billed.

(d) **tracking transaction information** that may include information indicating which service providers performed a service for the particular media asset. See, for example, at least references to rights distributor identification, partnerships, providing payments to rights distributor. For billing, see at least Col. 10, line 15-Col. 11, line 21.

Ginter **does not** always use the term **module** when referring to executable code. Ginter **does not** specifically refer to

*[a first unlabelled] module for receiving uploading...as in claim 22*

*[third through n-th unlabelled] modules for tracking... as in claim 22*

*[a second unlabelled] module for processing a request, as in claims 22 and 37*  
*report generation module, as in Claims 33, 34, 35, 37, 42*

*sharing module, as in claim 36*

Ginter's terminology includes *load module, objects, methods, containers, smart containers*, etc. These and other units of executable code perform functions claimed by applicant as being performed by *modules* with various labels.

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However, the specific label attached to one or more modules loaded onto a processor does not patentably distinguish the claimed system. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide any type of label to various modules in the system taught by Ginter because the subjective interpretation of the labels connected to various modules does not patentably distinguish the claimed invention.

Ginter **does not** use the term **service provider** to refer to entities that manage the gateway, network and stored media assets. Ginter refers to these entities by various other terms, including rights distributors, sub-distributors, re-distributors, partners. See, for example, at least Col. 294, lines 17-52. These entities receive requests from customers to perform services for particular media assets.

Again, the specific meaning/interpretation of the actions of the one or more entities does not patentably distinguish the claimed system. It would have been obvious to one of ordinary skill in the art at the time the invention was made to refer to entities doing business across a network by various names in the system taught by Ginter because the subjective interpretation of the labels connected to various entities does not patentably distinguish the claimed invention.

Ginter **does not** use the term **upload**. To upload is to transmit data from a computer to a network.<sup>1</sup> It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Ginter and knowledge generally available to one of ordinary skill in the art to disclose uploading data, including particular media asset of interest to a network. To enable information to be passed from one network to another, the data is received by gateways, i.e., device(s) that connect networks.

One of ordinary skill in the art at the time the invention was made to would have been motivated to combine Ginter and knowledge generally available to one of ordinary skill in the art to disclose uploading data, including particular media asset of interest to a network for the obvious reason by transmitting data from a user's computer to a network provides an easy, efficient way to made the data available to others who use the network.

Ginter **does not use** the term "media gateway" To enable information to be passed from one network to another, the data is received by gateways, i.e., device(s) that connect networks. However, the labels given to various actors and modules are not functionally related to the substrate of the article of manufacture. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Ginter and knowledge generally available to one of ordinary skill in the art to disclose a "media gateway" that receives plurality of media assets uploaded from a plurality of devices and to apply a label to various actors and modules in a system such as Ginter because such data does not functionally relate to the substrate of the article of manufacture and merely labeling the data differently from that in the prior art would have been obvious. See *Gulack* cited above.

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<sup>1</sup> Definition of *upload*, RANDOM HOUSE WEBSTER'S Computer and Internet Dictionary.

**Claims 5 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ginter et al., (US 5,892,900) in view of Chui et al (US 6,657,702).**

**As per claims 5 and 26**, Ginter discloses that media assets may include digital images. See, for example, at least Col. 23, lines 1-36.

**As per claims 5 and 26**, Ginter **does not** specifically disclose that a service provider may provide **photo-finishing** services. Chui discloses that service providers may provide photo-finishing services. See, for example, at least Figs. 3B, 4, related text.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Ginter and Chui to disclose that a service provider may provide photo-finishing services. One of ordinary skill in the art at the time the invention was made would have been motivated to combine Ginter and Chui to disclose that a service provider may provide photo-finishing services for the obvious reason that a user may wish to share images with other persons, for example, a family member or a friend. By placing an image at a gateway like Ginter's and making the image available to family members and friends, a user may avoid entering a considerable amount of redundant information and incurring additional expenses.

#### **(10) Response to Arguments**

At the onset, the Examiner notes:

- (1) Although appellant's specifications contain several mentions of media gateway, appellant provides no explicit definition for the terms.
- (2) Absent explicit definitions, the Examiner relies on the term's ordinary meaning and broadest reasonable interpretation of terms. *E-Pass Technologies, Inc. v. 3Com Corporation*, 343 F.3d 1364, 1368, 67 USPQ2d 1947, 1949 (Fed. Cir. 2003).
- (3) The Examiner notes the following terms used in appellant's claims:

**gateway** is a device that connects networks using different communications protocols so that information can be passed from one to the other [MICROSOFT PRESS Computer Dictionary].

**As to the first ground of rejection**, Appellant argues:

...the Examiner relied on an interpretation of Ginter that went beyond the literal teaching of Ginter. The Examiner suggested that Ginter and alleged knowledge in the art discloses a "gateway." Ginter discloses multiple networks connected to Ginter's information utility (...). This, according to the Examiner, inherently discloses a gateway (...) The Examiner

defines a "gateway" as "a device that connects networks using different communication protocols so that information can be passed from one to the other" [page 3, citations omitted]

The Examiner highlights the absence of any notion of inherency in any Office Action. Further, Appellant incorrectly attributes the definition of **gateway** to the Examiner. The definition is MICROSOFT's.

Appellant argues that the Examiner fails to use Appellant's own definition for the term "media gateway". In response to this arguments, the Examiner notes that (a) Ginter reads on appellant's invention, and alternatively, (b) Ginter structurally and functionally discloses the features ascribed by appellant to his "media" gateway.

**(a) Ginter reads on appellant's invention**

Appellant relies on his specifications, page 5, lines 11-12 [sic]:

	The asset management system includes a media gateway, media vault, media
10	exchange, and asset tracking module. The media gateway predominately plays the role of
	capturing wireless and wireline uploads that are arriving from various devices. The media
	exchange is responsible for sending content to target devices, performing any required
(3	on-the-fly translation of stored media from one photo format into another, as required for
10	rendering at a given target device. The media vault serves to maintain and organize media
(0	

Ginter's discloses capturing wireless and wireline uploads that arrive from various devices. See, for example, Col. 39, lines 4-42.

Appellant relies on his specifications, page 20, lines 6-9:

5	is the media gateway, which interacts with the camera and phone to receive the ten photos.
	The media gateway itself tracks information about the user session, including user
	information, what time of day the photos were uploaded, and how many photos were
	uploaded. After receiving the photos, media gateway in turn transfers the photos to the media
	vault. Now suppose that the user desires to "share" the photos online with one or more
10	recipients. The term "share" means making the uploaded photos publicly available on the

Ginter discloses tracking information about user sessions, including user information (Col. 26, lines 37-65), what time of the day [media] was uploaded, and how many [images] were uploaded. See also, for example, Col. 1, line 52-Col. 2, line 7. The Examiner also highlights the absence of *photos* from the claims.

Application 09/759,108, page 19, lines 23-25, incorporated by reference on 14 April 2004, does not provide further description for the “media” gateway:

20	Hitachi, Samsung, and others. A size of about 4 MB (megabyte) or more is suitable for this component.
	The next several components discussed, which may be viewed as components hanging off of the Address and Data Buses of the Processor 106, are typical components that one would ordinarily expect to find when implementing a data processing device;
25	collectively, these components may be viewed as a computer embedded in the camera. For

The Examiner again notes that where applicant acts as his or her own lexicographer to specifically define a term of a claim contrary to its ordinary meaning, the written description must clearly redefine the claim term and set forth the uncommon definition so as to put one reasonably skilled in the art on notice that the applicant intended to so redefine that claim term. *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999). As shown above, appellant has failed to do so.

**(b) Ginter structurally and functionally discloses appellant’s media” gateway.** Appellant’s “media” gateway does not function in a different manner from Ginter, which collects, stores, retrieves and distributes media content (including text, video, images) from any source. Ginter tracks usage of downloaded content for billing.



It should also be noted that it is well known to target and track usage of media to allow for billing, and to collect information concerning users and sell it to outside vendors to help target their specific needs.

**As to the second ground of rejection**, Appellant argues, page 6, lines 6-27 that Chui also does not disclose the "media" gateway. Appellant presupposes that Ginter does not disclose appellant's "media" gateway to undermine the combination of Ginter and Chui. The Examiner respectfully disagrees for reasons stated above.

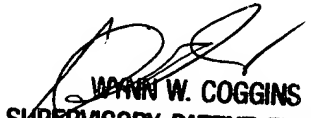
For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

JZ James Zurita  
23 December 2005

Conferees:  
James Zurita  
Patent Examiner  
Art Unit 3625

Wynn Coggins   
Supervisory Patent Examiner  
Art Unit 3625

  
WYNN W. COGGINS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600

John Weiss   
Appeals Specialist  
Supervisory Patent Examiner  
Art Unit 3629

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP  
12400 Wilshire Boulevard  
Seventh Floor  
Los Angeles, CA 90025-1026